

tropospheric ozone formation. The compounds are: 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane, 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)hexane, 1,1,1,2,3,3,3-heptafluoropropane, and methyl formate. Companies producing or using the four compounds will no longer need to follow the VOC rules for these compounds.

The requirements for t-butyl acetate are also modified. It is not considered a VOC for emission limits and content requirements. T-butyl acetate will still be considered a VOC for the recordkeeping, emissions reporting, and inventory requirements.

Indiana is removing ethylene glycol monobutyl ether (EGBE) (2-Butoxyethanol) from its HAP list, too. EGBE will no longer be considered a hazardous air pollutant.

**DATES:** Written comments must be received on or before July 12, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2006-0004, by one of the following methods:

- <http://www.regulations.gov>: Follow the online instructions for submitting comments.

- *E-mail:* [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

- *Fax:* (312) 886-5824.

- *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6524, [rau.matthew@epa.gov](mailto:rau.matthew@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submission as a direct final rule

without prior proposal because the Agency views this as a noncontroversial submission and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: May 16, 2006.

**Norman Niedergang,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 06-5251 Filed 6-9-06; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2005-VA-0010; FRL-8182-9]

### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Amendments to Existing Regulation Provisions Concerning Maintenance, Nonattainment, and Prevention of Significant Deterioration Areas

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. These revisions consist of amendments to state regulation provisions concerning maintenance, nonattainment, and prevention of significant deterioration (PSD) areas for incorporation into the Virginia SIP. This action is being taken under the Clean Air Act (CAA or the Act).

**DATES:** Written comments must be received on or before July 12, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-

R03-OAR-2005-VA-0010 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:* [morris.makeba@epa.gov](mailto:morris.makeba@epa.gov).

C. *Mail:* EPA-R03-OAR-2005-VA-0010, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2005-VA-0010. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly

available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:**

Ellen Wentworth, (215) 814-2034, or by e-mail at [wentworth.ellen@epa.gov](mailto:wentworth.ellen@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 15, 17, 19, September 28, and October 3, 2005, the Commonwealth of Virginia, Department of Environmental Quality, submitted revisions to its SIP. These revisions consisted of amendments to Virginia's regulations pertaining to nonattainment, maintenance, and prevention of significant deterioration (PSD) areas. More detailed information on these proposed revisions can be found in the technical support document (TSD) prepared for this rulemaking.

Listed below is a summary of each of the revisions that is being proposed for incorporation into the Virginia SIP.

**II. Summary of SIP Revisions**

A. On August 15, 2005, the Commonwealth of Virginia submitted a revision to its SIP. This revision eliminates the air quality maintenance area (AQMA) concept found in 9 VAC 5-20-203, which was promulgated by the EPA in the 1970's, and replaces it with the maintenance area concept consistent with the 1990 Clean Air Act Amendments (CAAA). This action will not result in the backsliding of any control measures that have been submitted by the Commonwealth and approved by EPA into the Commonwealth of Virginia SIP. The August 15, 2005 revision also reflects the redesignation of the Hampton Roads Area to attainment of the 1-hour ozone national ambient air quality standards (NAAQS) (62 FR 34408, June 26, 1997), by adding the area to the list of ozone maintenance areas found in 9 VAC 5-20-203.1, and deleting the area from the list of 1-hour ozone nonattainment areas found in 9 VAC 5-20-204.1(c). Additionally, this revision removes the exclusion of the Hampton Roads Area from the list of PSD areas found in 9 VAC 5-20-205.A.4(f).

B. On August 17, 2005, the Commonwealth of Virginia submitted a revision to its SIP. This revision reflects

the redesignation of the Richmond 1-hour ozone nonattainment area to attainment (62 FR 61237, November 17, 1997), of the 1-hour standard by amending 9 VAC 5-20-204.1(b) to remove the Richmond Area from the list of areas regulated as nonattainment areas, and adding it to the list of maintenance areas found in 9 VAC 5-20-203.1. The revision also reflects the removal of the exemption of the Richmond Area from the list of PSD areas found in 9 VAC 5-20-205.A(e).

C. On August 19, 2005, the Commonwealth of Virginia submitted a revision to its SIP. This revision reflects the first repeal of the 1-hour ozone NAAQS (63 FR 31087, June 5, 1998), by removing the White Top Mountain Area from the list of 1-hour ozone nonattainment areas found in 9 VAC 5-20-204.1(b). The revision further amends 9 VAC 5-20-205.A(4) by removing the exemption of the White Top Mountain Area from the list of areas subject to regulation as a PSD area.

In the June 5, 1998 (63 FR 31087) final rulemaking, the 1-hour ozone standard was repealed for areas that had not measured a current violation of the 1-hour standard. All of Smyth County, Virginia, including the White Top Mountain Area, was one of the areas where the 1-hour standard no longer applied. The August 19, 2005 SIP revision reflects this repeal of the 1-hour ozone NAAQS by removing the White Top Mountain Area from the list of 1-hour ozone nonattainment areas in 9 VAC 5-20-204.1(b) and removing its exclusion from the list of PSD areas in 9 VAC 5-20-205.A(4). However, in a 1999 court decision, EPA's previous determinations on the applicability of the 1-hour ozone standard (63 FR 31014 June 5, 1998), were challenged, and as a result, on October 25, 1999 (64 FR 57424), EPA proposed that the 1-hour ozone standard would be reinstated in those areas where it had previously been revoked and the associated designations and classifications that previously applied in such areas with respect to the 1-hour NAAQS would also be reinstated. In a July 20, 2000 (65 FR 45182) final rule, EPA reinstated the White Top Mountain Area as a rural transport (marginal) ozone nonattainment area under the 1-hour ozone NAAQS. The effective date for the reinstatement of the 1-hour ozone NAAQS in the White Top Mountain Area was January 16, 2001 (65 FR 45182).

On April 30, 2004 (69 FR 23951), EPA published the first phase of its final rule to implement the 8-hour ozone NAAQS (Phase I Rule). Also on April 30, 2004 (69 FR 23858), EPA published 8-hour

ozone designations for all areas of the country. For most areas, including the White Top Mountain Area, the designations under the 8-hour ozone NAAQS became effective on June 15, 2004. The Phase I Rule provided that the 1-hour ozone NAAQS would no longer apply for an area one year following the effective date of the area's designation for the 8-hour ozone NAAQS. On August 3, 2005 (70 FR 44470), EPA issued a final rule that codified the revocation of the 1-hour standard for those areas with effective 8-hour ozone designations. On June 15, 2005, all of Smyth County, Virginia was no longer subject to the 1-hour ozone NAAQS and was designated attainment of the 8-hour ozone NAAQS. Now that the 1-hour standard has been revoked and the White Top Mountain Area is designated attainment for all NAAQS, the only permitting program Virginia must have under Title 1 of the CAA is the PSD program. Therefore, EPA can now approve these changes to 9 VAC 5-20-204.1(b) and 9 VAC 5-20-205.A(4) for the White Top Mountain Area that were submitted on August 19, 2005 into the Virginia SIP.

D. On September 28, 2005, the Commonwealth of Virginia submitted a revision to its SIP. The revision consists of updates to existing regulations by incorporating the new 8-hour ozone nonattainment areas into the list of Virginia's nonattainment areas found in 9 VAC 5-20-204.A and revising the list of PSD areas found in 9 VAC 5-20-205.A. The revision also adds a provision, 9 VAC 5-20-204.B., which removes the severe area program in the Northern Virginia Ozone Nonattainment Area as the area was constituted under the 1-hour standard. Because the severe area program imposed more stringent requirements than required under section 184 of the CAA in that area, Virginia did not need to have a separate new source review (NSR) program meeting the section 184 requirements. On January 6, 2006, (FR 71 890), EPA proposed to approve a SIP revision to implement the NSR program required under section 184 of the CAA in Virginia's portion of the Ozone Transport Region (OTR). EPA is proposing approval of the September 28, 2005 SIP revision contingent upon EPA issuing a final action approving the January 6, 2006 (71 FR 890) rulemaking. It should be noted that since the September 28, 2005 SIP revision submittal, EPA has redesignated the Fredericksburg (December 23, 2005, 70 FR 76165), and Shenandoah National Park (January 3, 2006, 71 FR 24) areas

to attainment of the 8-hour ozone NAAQS.

The revision to 9 VAC 5–20–205.A amends the list of PSD areas by deleting the list of specific localities and incorporating language indicating that the areas subject to PSD are those areas that are not designated as nonattainment in 9 VAC 5–20–204.A. The September 28, 2005 SIP submittal also removes mercury, beryllium, asbestos, and vinyl chloride from the list of pollutants found in 9 VAC 5–20–205.B for which PSD areas are defined. The 1990 Amendments to the CAA at section 112(b)(6) exempted hazardous air pollutants (HAPs) listed under section 112(b)(1) from the PSD requirements in part C of the CAA. These HAPs include: arsenic, asbestos, benzene, beryllium, mercury, radionuclides, and vinyl chloride, all of which were previously regulated under the PSD rules. Virginia has consequently removed these pollutants from 9 VAC 5–205.B to conform to the 1990 CAA Amendments.

E. On October 3, 2005, the Commonwealth of Virginia submitted a revision to its SIP. This revision updates existing regulations to 9 VAC 5–20–204.A.2 by changing the nonattainment classification of the Richmond 8-hour ozone nonattainment area from “moderate” to “marginal.” This change reflects EPA’s reclassification of the Richmond Area which was published on September 22, 2004 (69 FR 56697).

### III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia’s legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia’s Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not

extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by Federal law to maintain program delegation, authorization or approval,” since Virginia must “enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. \* \* \*” The opinion concludes that “[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1–1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to

enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

### IV. Proposed Action

EPA is proposing to approve the Commonwealth of Virginia’s SIP revisions amending existing regulations pertaining to nonattainment, maintenance and PSD areas which were submitted on August 15, 17, 19, September 28, and October 3, 2005. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255,

August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This proposed rule, pertaining to amendments to existing regulation provisions concerning Virginia's nonattainment, maintenance, and PSD areas, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: June 1, 2006.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. E6-9081 Filed 6-9-06; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

[Docket No. FEMA-D-7660]

#### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** William R. Blanton, Jr. CFM, Acting Section Chief, Engineering Management Section, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (202) 646-3151.

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact

stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

**National Environmental Policy Act.** This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act.** The Mitigation Division Director certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

**Regulatory Classification.** This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 13132, Federalism.** This rule involves no policies that have federalism implications under Executive Order 13132.

**Executive Order 12988, Civil Justice Reform.** This rule meets the applicable standards of Executive Order 12988.

#### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

#### PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

#### § 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows: